

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

DAVID R. CUBBY,

Plaintiff,

vs.

CITY OF PATERSON; STATE OF NEW
JERSEY; COUNTY OF PASSAIC; COUNTY
OF BERGEN; GOVERNOR PHIL MURPHY;
CAMELIA VALDEZ; JERRY SPEZIALE;
G&S HUNTERS; ALMA BANK; ALMA
REALTY CORP.; FABIAN-ALEXANDRIA,
LLC; RICHARD BLENDER; NINA SURICH;
JOHN MEOLA; JOHN SEGRETO; DAVID
STANZIALE; SOHAIL MOHAMED; BONNIE
MIZDOL; KIM CITRINO; RYAN
MORIARTY; STEPHEN BUDELMAN;
CHARLES CENTINARO; DOMENICK
STAMPONE; JOHN ABDELHADI;

Defendants.

5:24-CV-05087-ECS

ORDER TO SHOW CAUSE WHY CASE
SHOULD NOT BE TRANSFERRED

David R. Cubby (“Plaintiff”) filed this Complaint on November 26, 2024. Doc. 1.

Plaintiff asserts various claims including claims pursuant to 42 U.S.C. § 1983. Id. Defendants appear to all be residents of New Jersey. Id. at 9. Although Plaintiff claims to be a current resident of South Dakota, he does not allege that any of Defendants’ alleged conduct occurred in South Dakota. See generally id. Plaintiff also moved to proceed in forma pauperis (“IFP”).

Doc. 2. When there is an IFP motion pending, courts in this circuit have still considered transfer or dismissal under 28 U.S.C. § 1406.¹ See, e.g., Fox v. Nicholson, No. 8:23CV544, 2023 WL

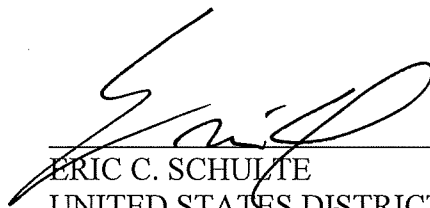
¹ 28 U.S.C. § 1406(a) provides: “The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.”

8806598, at *2 (D. Neb. Dec. 20, 2023) (dismissing complaint as venue was improper because no defendant resided in the district and “a substantial part of the events giving rise to the causes of action did not occur in [the] district.”); Siruk v. Mazur, No. 21-CV-0054, 2021 WL 1795624, at *2 (D. Minn. Feb. 3, 2021) (recommending that “[t]he case be dismissed without prejudice for improper venue under 28 U.S.C. § 1391(b), and not be transferred as contemplated by 28 U.S.C. § 1404(a) because the interests of justice do not support transfer” and that the plaintiff’s IFP motion be denied as moot), report and recommendation adopted, 2021 WL 1687174 (D. Minn. Apr. 29, 2021). Because the Complaint lacks a connection to South Dakota, Plaintiff must show cause why venue is proper in South Dakota and why this case should not be transferred to the Newark Division of the District of New Jersey. It is therefore

ORDERED that Plaintiff has until February 21, 2025 to show cause why venue is proper in the District of South Dakota and why the case should not be transferred to the Newark Division of the District of New Jersey.

DATED this 4th day of February, 2025.

BY THE COURT:



ERIC C. SCHULZE
UNITED STATES DISTRICT JUDGE